TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1920

No. [redacted]68

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

HARRY C. WHEELER, GEORGE B. WILCOX, WALTER DOUGLAS ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ARIZONA.

FILED FEBRUARY 11, 1921.

(26933)



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REME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 847.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

;RY C. WHEELER, GEORGE B. WILCOX, WALTER DOUGLAS ET AL.

: TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF ARIZONA.

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1 In the District Court of the United States for the District of Arizona.

UNITED STATES OF AMERICA *vs.* HARRY C. WHEELER, JOHN C. GREENWAY, GEORGE B. WILCOX, WALTER DOUGLAS, ROBERT RAE, MILES MERRILL, GERALD SHERMAN, MICHAEL J. CUNNINGHAM, JAMES ALLISON, BASSETT T. SHATTUCK, MICHAEL J. BROPHY, PHILIP TOVREA, WILLIAM H. BROPHY, REUBEN A. CLAMPITT, CHARLES H. HUNT, JAMES L. GANNON, VANCE M. JOHNSON, NELSON C. BLEDSOE, JOSEPH P. HODGSON, ALVAN W. HOWE, WILLIAM P. SIMS, HASCAL SNODGRASS, G. H. DOWELL, and H. H. STOUT, defendants.	C-692. Tucson.

Names and addresses of counsel of record in above-entitled case.

Thomas A. Flynn, United States attorney for the District of Arizona, Phoenix, Arizona; William C. Fitts, Assistant Attorney General of the United States of America, Washington, D. C.; Oliver E. Pagan, attorney, Department of Justice, Washington, D. C.; counsel for the United States of America.

Ellinwood & Ross, attorneys at law, Bisbee, Arizona, and Clifton Mathews, attorney at law, Bisbee, Arizona, counsel for defendants.

2 In the District Court for the United States of America for the District of Arizona.

UNITED STATES OF AMERICA *vs.* HARRY C. WHEELER, JOHN C. GREENWAY, GEORGE B. WILCOX, WALTER DOUGLAS, ROBERT RAE, MILES MERRILL, GERALD SHERMAN, MICHAEL J. CUNNINGHAM, JAMES ALLISON, BASSETT T. SHATTUCK, MICHAEL J. BROPHY, PHILLIP TOVREA, WILLIAM H. BROPHY, REUBEN A. CLAMPITT, CHARLES H. HUNT, JAMES L. GANNON, VANCE M. JOHNSON, NELSON C. BLEDSOE, JOSEPH P. HODGSON, ALVAN W. HOWE, WILLIAM P. SIMS, HASCAL SNODGRASS, G. H. DOWELL, and H. H. STOUT, defendants.	C-692. Tucson.

Comes now the grand jury aforesaid, and through their foreman, report that they have found a true bill of indictment against *against* the defendants above named, charging them with conspiracy to deprive a citizen of the rights guaranteed to him by the Constitution and laws of the United States in violation section 19, Penal Code, 1910.

(Minute entry—dated May 11th—Tucson, Arizona.)

3 In the District Court of the United States of America for the District of Arizona. Of the May term in the year 1918, at Tucson.

District of Arizona, *ss:*

First count.

The grand jurors for the United States of America, empaneled and sworn in the District Court of the United States for the district of Arizona at the May term of said court in the year 1918, and inquiring for said district, upon their oath present, that before and on the twelfth day of July, in the year nineteen hundred and seventeen, S. Y. Abercrombie, Joe Absetz, R. F. Aldridge, Chris Allen, Francisco Arvizu, Rudolf Bahor, Chris Baker, W. H. Burney, Nels Bendixen, Henry Berger, W. A. Bevan, William Blackburn, Frank Birmingham, J. B. Borroum, C. B. Briscoe, Ernest Brown, Fred. W. Brown, Charley Brown, Sam Brooks, L. F. Burgert, David Burns, J. B. Campbell, Gust Carlson, Pete Caretto, Charles Carroll, Virgil B. Carter, James Casey, J. P. Chase, Loyd W. Chapin, William B. Cleary, Mike A. Conrad, W. A. Cook, Phil Courtney, F. L. Crawford, A. E. Crawford, Forest Creager, Ed. Critchley, Jack Crowl, Arthur Dannie, C. H. Davis, Nick Delaney, Alfred Monroe Deming, Richard Denning, Charles Dimmitt, R. A. Dorame, S. C. Dorey, Phil Douglass, H. A. Earnest, J. W. Eastburn, Charles Ellenwood, Frank Elliott, L. Ellis, Thomas N. English, Leo Entner, Pierre Ewert, William Favor, George Forrester, Thomas Gibbons, Oscar H. Green, Thomas G. Green, Charles W. Grupe, Harry Handly, Tim Hadsall, Erik Hallin, Felix Hanhila, G. B. Harmon, J. F. Harrington, Joseph Harrington, Peter L. Harrington, Walter Harrington, Wyatt Harris, Ralph Hart, Harry

4 D. Hartwick, Robert M. Heath, John Heikkila, A. C. Hendrick, Frank Hester, Fred Hofheinz, Harry Hogan, James Hogan, Michael E. Hogan, J. F. Holman, Harry Howard, J. H. Huber, John Hunt, Harvey S. James, Robert R. Jones, O. W. Johnson, Roy O. Johnson, Edward J. Johnston, William E. Keate, Joseph L. King, Edward Klausner, Ben Koenigs, Anton Krall, Dan Krich, Fred Lagori, Richard Langdon, W. Skochelich Lawrence, C. W. Leitz, Albert Lindkvist, Clifford Linn, W. H. Lithgow, T. H. Loftus, Ysidro Y. Lopez, Charles D. Loydahl, John Lyng, Charley McGourty, J. D. McCoy, J. C. McCutcheon, J. T. McDaniel, James McGaffegan, D. E. McIntosh, J. P. Magner, Oscar E. Malin, Richard Manner, Coronado Martinez, Gust Mattson, Emile Maumus, Wm. F. Mowatt, Eli May, Scott Melville, Leon E. Metz, William C. Moodie, F. S. Moore, F. A. Morgan, Fred Moss, John E. Murphy, George J. Murphy, Bernard Meyers, Dee Carroll Nations, E. M. Neal, Peter Nestley, R. G. Noble, Jack F. Norman, W. M. Norris, T. J. O'Brien, Frank O'Connor, John J. O'Donnell, W. E. Oxley, Victor Pajunen, Walter Parker, Jack Parks, Robert E. Pastors, Roy Patton, Russell Pence, Wm. H. Persing, Louis Peterson, Alfonse

Phillips, C. B. E. Phillips, George T. Philips, J. L. Phillips, L. E. Pollard, Peter Powell, Pite Prlia, Carl L. Pyeatt, Ramon Quiros, J. L. Ramsey, Joe Reddy, Ben Reep, James Reilly, W. V. Rein-Schmidt, John Ribinski, Harry Richards, Jack Ringo, M. J. Roche, Wm. R. Rogers, Markus Schutte, Gus Selin, Felix Segulja, Matt K. Soori, L. C. Sharp, Mike Simmons, George Henry Sims, Gottlieb Schmidt, Frank Elmer Smith, Eugene Smith, J. S. Smith, Griffin Hiram Stollings, Jesse L. Stollings, Stanly Stonis, George Stretch, Anton Stukel, S. Summers, Charles E. Sullivan, John Sullivan, N. O. Sullivan, Rudolph Swetish, N. S. Sweet, Stephen Swetish, Charles E. Tannehill, E. B. Taylor, F. G. Taylor, Clint Thomas, Henry Thomas, Bradly Thompson, Fred M. Turnboo, Walter E. Varnes, John Veale, George Vucurevich, R. A. Waddill,
5 Charles Wagner, Ben K. Webb, R. W. Webb, Charles C. Weiss, G. W. Wercinski, H. K. West, Ed Williams, J. S. Wofford, Charles Wohlschlegel, Roger Wolfe, Frank Wheeler, George White, H. F. Whitman, C. F. Wilson, W. J. B. Wilson, Orville Wright, R. F. Wright, Oscar Wylund, Robert Young, and Nick Zoro were citizens of the United States residing in the county of Cochise, in the State and in said district of Arizona, in the peace of said county, State, and district, and then and there, as such citizens of the United States, were exercising the right and privilege pertaining to citizens of said State peaceably there to reside and remain, and to enjoy the blessings of liberty, rather than in another State of the United States, and the right and privilege pertaining to citizens of said State to be immune from unlawful deportation from that State to another State; and then and there were not persons charged in any State with treason, felony, or other crime, who had fled from justice of such State and been found in said State of Arizona, or persons found in said State of Arizona who had committed crimes or offenses against the United States in another State or in other States, or persons under sentence of imprisonment in a prison or prisons located in another State or in other States, or persons subject to extradition to a foreign country or foreign countries.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that continuously and all times throughout the period of time from the first to and including said twelfth day of July, in the year aforesaid, at and within said county of Cochise, and in said district of Arizona, Harry C. Wheeler, John C.
6 Greenway, George B. Wilcox, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, William H. Brophy, Reuben A. Clampitt, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, and Hascal Snodgrass, and G. H. Dowell and H. H. Stout, whose Christian names are to said grand jurors unknown, hereinafter

referred to as defendants, well knowing all the premises aforesaid, unlawfully and feloniously did conspire, combine, confederate, and agree together, and with divers other persons to said grand jurors unknown, to injure, oppress, threaten, and intimidate said citizens of the United States in the free exercise and enjoyment by them, respectively, of certain rights and privileges secured to them as such citizens by the Constitution and laws of the United States; that is to say, the rights and privileges aforesaid which said unlawful and felonious conspiracy, combination, confederation, and agreement then and there was one for injuring, oppressing, threatening, and intimidating said citizens of the United States in the free exercise and enjoyment of said rights and privileges by unlawfully and with force and arms driving and conveying said citizens in a body from their said places of residence in said State of Arizona to and into another State, to wit, New Mexico, deporting said citizens from said State of Arizona to said State of New Mexico, and threatening said citizens with great bodily harm and death if they should return or endeavor to return to said State of Arizona.

Overt acts.

7 And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in and for executing the unlawful and felonious conspiracy, combination, confederation, and agreement aforesaid, certain of said defendants, at the several times and places in that behalf hereinafter mentioned in connection with their names, did do certain acts; that is to say:

1. Said Harry C. Wheeler, John C. Greenway, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Philip Tovrea, Reuben A. Clampitt, Nelson C. Bledsoe, Joseph P. Hodgson, and G. H. Dowell, on July 11, 1917, at Bisbee, in said county of Cochise and in said State and district of Arizona, attended a meeting at which were discussed the matter and method of forcibly deporting said citizens and the place to which they should be deported.

2. Said Harry C. Wheeler, on July 11, 1917, at Bisbee aforesaid, directed said G. H. Dowell to secure from the El Paso and Southwestern Railroad Company a railroad train for the use of said defendants in forcibly deporting said citizens.

3. Said H. H. Stout and Robert Rae, on July 12, 1917, at Douglas, in said county, State, and district, directed the manager of the Western Union Telegraph Company there to refuse to transmit that day all telegrams concerning the fact of the intended forcible deportation of said citizens.

4. Said H. H. Stout, on July 12, 1917, at Douglas aforesaid, by telephone, directed the exchange manager of said telephone and telegraph company at Bisbee aforesaid to refuse to permit any telephone communication that day between Bisbee and other points.

5. Said H. H. Stout, on July 12, 1917, at Douglas aforesaid, directed the exchange manager of the Mountain States Telephone and Telegraph Company there to refuse to permit any tele-
8 phone communication that day between Douglas and other points.

6. Said Harry C. Wheeler, on July 12, 1917, at Bisbee aforesaid, procured a machine gun for the use of said defendants in forcibly deporting said citizens.

7. Said Harry C. Wheeler, John C. Greenway, George B. Wilcox, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, William H. Brophy, Reuben A. Clampitt, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, and G. H. Dowell, on July 12, 1917, at Bisbee aforesaid, and at Lowell and Warren, in said county, State, and district, provided themselves with firearms, assisted in forcibly seizing said citizens and in collecting them in a baseball park, in forcibly driving said citizens from said park to said railroad train, and in transporting said citizens in said railroad train, under armed guards, to Columbus, in the State of New Mexico.

Conclusion.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that said defendants, continuously throughout the period of time at the place and in manner and form aforesaid, unlawfully and feloniously did conspire, combine, confederate, and agree together to injure, oppress, threaten, and intimidate citizens in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States, and certain of said defendants did do acts to effect the object of the conspiracy, against the peace and dignity of the United States and contrary to the form of the statute of the same in such case made and provided.

9 Second count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on said twelfth day of July, in the year nineteen hundred and seventeen, Rudolph Babor, C. B. Briscoe, L. F. Burgert, Mike A. Conrad, Phil Courtney, Jack Crowl, George Forrester, Brik Hallin, Frank Hester, Robert R. Jones, William S. Keate, Edward Klausner, Dan Krich, Charles G. Loydahl, Emile Maumus, George J. Murphy Russell Pence, George T. Phillips, Carl L. Pyeatt, Joe Reddy, Jack Ringo, Fred M. Turnboo, Charles Wagner, Ben K. Webb, and R. F. Wright were citizens of the United States residing in said county of Cochise, in the State and in said district of Arizona, in the peace of said county, State, and district,

but not citizens of said State, and then and there, as such citizens of the United States, were exercising the right and privilege pertaining to citizens of other States of the United States other than said State of Arizona peaceably there to reside and remain, and to enjoy the blessings of liberty, and the right and privilege of being immune from unlawful deportation from that State to another State; and then and there were not persons charged in any State with treason, felony, or other crime, who had fled from justice of such State and been found in said State of Arizona, or persons found in said State of Arizona who had committed crimes or offenses against the United States in another State or in other States, or persons under sentence of imprisonment in a prison or prisons located in another State or in other States, or persons subject to extradition to a foreign country or foreign countries; and that the particulars of the citizenship in other States than said State of Arizona, of the citizens in this count of this indictment named, are to said grand jurors unknown.

10 And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the defendants named in the first count of this indictment, continuously and at all times throughout the period of time from the first to and including said twelfth day of July, in the year last aforesaid, at and within said county of Cochise, and in said district of Arizona, well knowing all the premises in this count of this indictment aforesaid, unlawfully and feloniously did conspire, combine, confederate, and agree together, and with divers other persons to said grand jurors unknown, to injure, oppress, threaten, and intimidate the citizens in this count named in the free exercise and enjoyment by them respectively of certain rights and privileges secured to them, as such citizens, by the Constitution and laws of the United States, that is to say, the rights and privileges in this count aforesaid; which said unlawful and felonious conspiracy, combination, confederation, and agreement in this count mentioned then and there was one for injuring, oppressing, threatening, and intimidating said last-mentioned citizens in the free exercise and enjoyment of said last-mentioned rights and privileges by unlawfully and with force and arms driving and conveying said citizens in a body, from their said places of residence in said State of Arizona, to and into another State, to wit, New Mexico, and threatening said citizens with great bodily harm and with death if they should return or endeavor to return to said State of Arizona.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in and for executing the unlawful and felonious conspiracy, combination, confederation, and agreement in this count of this indictment described, certain of said defendants, at the several times and places in that behalf mentioned under the

11 heading "Overt acts" in the first count of this indictment, did do certain acts, that is to say, the several acts mentioned in said first count, under said heading, in connection with their names; the allegations of which said acts in said first count are incorporated

in this count by reference to said first count as fully as if they were here repeated:

Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Third count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on said twelfth day of July, in the year nineteen hundred and seventeen, S. Y. Abercrombie, Joe Absetz, R. F. Aldridge, Chris Allen, Francisco Arvizu, John Babor, Chris Baker, W. M. Barney, Nels Bendixen, Henry Berger, W. A. Bevan, Frank Birmingham, William Blackburn, J. B. Borroum, Sam Brooks, Ernest Brown, Fred W. Brown, Charley Brown, David Burns, J. B. Campbell, Pete Caretto, Gust Carlson, Charles Carroll, Virgil B. Carter, James Casey, Loyd W. Chapin, J. P. Chase, W. A. Cook, William B. Cleary, F. L. Crawford, A. E. Crawford, Forest Creager, Ed Critchey, Arthur Dannie, C. H. Davis, Nick Delaney, Alfred M. Deming, Charley Dimmitt, Richard Denning, R. A. Dorane, S. C. Dorey, Phil Douglas, H. A. Earnest, J. W. Eastburn, Chas. E. Ellenwood, Frank Elliott, L. Ellis, Thomas N. English, Leo Eutner, Pierre Ewert, William Favor, Thomas Gibbons, Thomas G. Green, Oscar H. Green, Charles W. Grupe, Tim Hadsall, Harry Handly, Felix Hanhila, G. B. Harmon, J. F. Harrington, Joseph Harrington, Walter Harrington, Peter L. Harrington, Wyatt Harris, Ralph Hart, Harry D. Hartwick, Robert M. Heath, John Heikkila, A. G. Hendrick, Fred Hofheins, Michael E. Hogan, James Hogan, Harry Hogan, J. F. Holman, Harry Howard, J. K.
12 Huber, John Hunt, Harvey S. James, Edward J. Johnson, O. W. Johnson, Roy O. Johnson, Joseph L. King, Ben Koenigs, Anton Krall, Fred Lagori, Richard Langdon, W. Skochelich Lawrence, C. W. Leitz, Albert Lindkvist, W. H. Lithgow, Clifford Lynn, T. H. Loftus, Ysidro Y. Lopez, John Lyng, J. P. Magner, Oscar E. Malin, Richard Manner, Coronado Martinez, Gust Mattson, Eli May, Scott Melville, Leon E. Metz, Bernard Meyers, Charley McGourty, J. D. McCoy, J. C. McCutcheon, J. T. McDaniel, James McGaffegan, D. E. McIntosh, F. A. Morgan, Fred Moss, William C. Moodie, F. S. Moore, William F. Mowatt, John E. Murphy, Dee Carroll Nations, E. M. Neal, Peter Nestley, R. G. Nobbe, Jack F. Norman, W. M. Norris, T. J. O'Brien, Frank O'Conner, John J. O'Donnell, W. E. Oxley, Victor Pajunen, Walter Parker, Jack Parks, Robert E. Pastors, Roy Patton, William H. Persing, Louis Peterson, C. B. E. Phillips Alfonse Phillips, J. L. Phillips, L. E. Pollard, Peter Powell, Pite Prlia, Ramon Quiroz, J. L. Ramsey, Ben Reep, James Reilly, W. V. Reinschmidt, John Ribinski, Harry Richards, M. J. Roche, William R. Rogers, Gottlieb Schmidt, Markus Schutte, Felix Segulja, Gus Selin, L. C. Sharp, Mike Simmons, George Henry Sims, Frank Elmer Smith, Eugene Smith, J. S.

Smith, Matt K. Soori, Griffen Hiram Stollings, Jesse L. Stollings, Stanly Stonis, George Stretch, Anton Stukel, Charles E. Sullivan, John Sullivan, H. C. Sullivan, S. Summers, N. S. Sweet, Stephen Swetish, Rudolph Swetish, Charles E. Tannehill, E. B. Taylor, F. G. Taylor, Henry Thomas, Clint Thomas, Bradly Thompson, Walter E. Varnes, John Veale, George Vucurevich, R. A. Waddill, R. W. Webb, Charles C. Weiss, G. W. Wercinski, H. K. West, Frank Wheeler, George White, H. F. Whitman, Ed Williams, W. J. B. Wilson, C. F. Wilson, J. S. Wofford, Charles Wohlschlegel, Roger Wolfe, Orville Wright, Oscar Wylund, Robert Young, and Nick Zoro were citizens of the United States and of the State of Arizona, residing in the county of Cochise, in said State and
13 in said district of Arizona, in the peace of said county, State, and district, and then and there, as such citizens, were exercising the right and privilege pertaining to the citizens of said State peaceably there to reside and remain, and to enjoy the blessings of liberty, rather than in another State of the United States, and the right and privilege pertaining to the citizens of said State to be immune from unlawful deportation from that State to another State; and then and there were not persons charged in any State with treason, felony, or other crime, who had fled from justice of such State and been found in said State of Arizona, or persons found in said State of Arizona who had committed crimes or offenses against the United States in another State or in other States, or persons under sentence of imprisonment in a prison or prisons located in another State or in other States, or persons subject to extradition to a foreign country or foreign countries.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the defendants named in the first count of this indictment, well knowing all the premises in this count aforesaid, continuously and at all times throughout the period of time from the first to and including said twelfth day of July, in the year aforesaid, at and within said county of Cochise, and in said district of Arizona, unlawfully and feloniously did conspire, combine, confederate, and agree together, and with divers other persons to said grand jurors unknown, to injure, oppress, threaten, and intimidate the citizens in this count named in the free exercise and enjoyment by them respectively of certain rights and privileges secured to them, as such citizens, by the Constitution and laws of the United States, that is to say, the rights and privileges in this count aforesaid;
14 which said unlawful and felonious conspiracy, combination, confederation, and agreement in this count mentioned then and there was one for injuring, oppressing, threatening, and intimidating said last-mentioned citizens in the free exercise and enjoyment of their said rights and privileges by unlawfully and with force and arms driving and conveying said citizens in a body, from their said places of residence in said State of Arizona, to and into another State, to wit, New Mexico, deporting said citizens from said

State of Arizona to said State of New Mexico, and threatening them with great bodily harm and death if they should return or endeavor to return to said State of Arizona.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in and for executing the unlawful and felonious conspiracy, combination, confederation, and agreement in this count of this indictment described, certain of said defendants, at the several times and places in that behalf mentioned in connection with their names in the first count of this indictment under the heading, "Overt acts," did do the acts there described; the allegations of which said first count in that behalf are incorporated into this count by reference to said first count as fully as if they were here repeated:

Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Fourth count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that before and on the twelfth day of July, in the year nineteen hundred and seventeen, Francisco Arvizu, W. M. Barney, William Blackburn, J. B. Borroum, Sam Brooks, Charley Brown, Fred W. Brown, Ernest Brown, David Burns, Virgil
15 B. Carter, Loyd W. Chapin, W. A. Cook, Arthur Dannie, Richard Denning, Frank Elliott, L. Ellis, Thomas G. Green, Oscar H. Green, Tim. Hadsall, Felix Hanhila, Wyatt Harris, Harry D. Hartwick, Ralph Hart, Robert M. Heath, J. F. Holman, Harvey S. James, Ben Koenigs, Anton Krall, Richard Langdon, C. W. Leits, W. H. Lithgow, Ysidro Y. Lopez, John Lyng, D. E. McIntosh, Eli May, Wm. C. Moodie, F. A. Morgan, Fred Moss, John E. Murphy, Dee Carroll Nations, W. E. Oxley, Louis Peterson, Pite Prlia, Ben Reep, Gottlieb Schmidt, Felix Segulja, S. Summers, N. S. Sweet, Rudolph Swetish, E. B. Talyor, Clint Thomas, Henry Thomas, Bradley Thompson, Walter E. Varnes, John Veale, George Vucurevich, George White, J. S. Wofford, Orville Wright, and Nick Zoro were citizens of the United States and of the State of Arizona residing in the county of Cochise, in said State and in said district of Arizona, and were respectively male persons between the ages of twenty-one and thirty, to wit, male persons who, on June 5, 1917, had respectively attained their twenty-first birthday and who did not on that day attain and had not before then attained their thirty-first birthday, and who were then and there required by the proclamation of the President of the United States dated May 18, 1917, to present themselves, and on said June 5, 1917, did present themselves, for and submit to registration, under the provisions of the act of Congress approved May 18, 1917, and entitled "An act to authorize the President to increase temporarily the military establishment of the United States," at divers registration places in divers precincts in said county to said grand jurors unknown, between 7 a. m. and 9 p. m. on said June 5, 1917, those precincts then

being the precincts wherein the citizens mentioned in this count of this indictment had their permanent homes and actual places of legal residence on that day, from which they were not then
16 temporarily absent (said citizens then and there not being officers or enlisted men of the Regular Army, of the Navy, of the Marine Corps, or of the National Guard or Naval Militia in the service of the United States, or officers of the Reserve Corps or enlisted men in the Enlisted Reserve Corps in active service); and, on said twelfth day of July, in the year aforesaid, said citizens in this count of this indictment named, not having then been called into the military service of the United States by operation of said act of May 18, 1917, were then and there, as such citizens, exercising the right and privilege pertaining to citizens who had presented themselves for, and who had submitted to registration as aforesaid, of remaining unmolested at their said permanent homes and actual places of legal residence, subject to draft, and until drafted, under the provisions of said act of May 18, 1917, into the military service of the United States, rather than being required by force other than their own wills to depart from their said homes and residences and go to another State of the United States and to parts to them unknown, where they would be required by such force to remain, under threats of great bodily harm and of death, if they should return to their said homes and residences

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that continuously and at all times throughout the period of time from the first to and including said twelfth day of July, in the year aforesaid, at and within said county of Cochise, in said district of Arizona, the defendants named in the first count of this indictment, well knowing all the premises aforesaid, and well knowing the fact to be, as the grand jurors aforesaid, upon their oath aforesaid, charge it was, that none of said citizens in this count named was a person charged in any State with treason, felony,
17 or other crime, who had fled from justice of such State and been found in said State of Arizona, or persons found in said State of Arizona who had committed crimes or offenses against the United States in another State or in other States, or persons under sentence of imprisonment in a prison or prisons located in another State or in other States, or persons subject to extradition to a foreign country or foreign countries, unlawfully and feloniously did conspire, combine, confederate, and agree together, and with divers other persons to said grand jurors unknown, to injure, oppress, threaten, and intimidate said last-mentioned citizens in the free exercise and enjoyment by them respectively of a certain right and privilege secured to them, as such citizens, by the Constitution and laws of the United States, that is to say, the right and privilege in this count aforesaid; which said unlawful and felonious conspiracy, combination, confederation, and agreement in this count mentioned then and there was one for injuring, oppressing, threatening, and intimidating said last-named citizens in the free exercise and enjoy-

ment of said last-mentioned right and privilege by unlawfully and with force and arms driving and conveying said citizens in a body, from their said homes and residences in said county and State, to and into another State, to wit, New Mexico, deporting said citizens from said State of Arizona to said State of New Mexico, and threatening said citizens with great bodily harm and with death if they should return or endeavor to return to their said homes and residences in said county, in said State of Arizona.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that in and for executing the unlawful and
18 felonious conspiracy, combination, confederation, and agreement in this count of this indictment described, certain of said defendants, at the several times and places in that behalf mentioned under the heading "Overt acts" in the first count of this indictment, did do certain acts, that is to say, the several acts mentioned in said first count, under said heading, in connection with their names; the allegations of which said acts in said first count are incorporated in this count by reference to said first count as fully as if they were here repeated:

Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and pro-

THOMAS A. FLYNN,
United States Attorney.
WILLIAM C. FITTS,
Assistant Attorney General.
OLIVER E. PAGAN,
Attorney, Department of Justice.

19 Endorsements. C-692 Tucson. In the United States District Court for the District of Arizona. United States of America vs. Harry C. Wheeler, John C. Greenway, George B. Wilcox, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, William H. Brophy, Reuben A. Clampitt, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout. Indictment. A true bill. R. K. Shelton, foreman of the grand jury. Witnesses examined before the grand jury: William Neunhoffer, George E. Kellogg, Anna Bryan Cutting, Arthur A. Sundin, F. A. Young, M. Z. Tillotson, Charles Francis, Thomas N. English, Fred W. Brown, F. B. King, Edward Massey, A. S. Embree, Howard Sterling, James F. McDonald, Lon R. Bailey, Frank E. Thomas, Charles H. Bentley Walter E. Hawthorne, Blazo Damjanovich, Risto Tabakovich, William Favor, Abraham L. Hawley. Presented to the court in the presence of the grand jury by their foreman, and filed this 11th day of May, A. D. 1918. Mose Drachman, clerk.

20 In the United States District Court for the District of Arizona. Minute entry made on May 28th, 1918. Honorable William H. Sawtelle, district judge, presiding.

UNITED STATES OF AMERICA *vs.* GEORGE B. WILCOX, WALTER DOUGLAS, ROBERT Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout, defendants.	Docket No. C–692. Tucson.

The United States attorney, Thomas A. Flynn, being present, comes now each and all of the above named defendants, George B. Wilcox, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Brophy, Philip Tovrea, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout, by their attorney, E. E. Ellinwood, esquire, and upon being arraigned at the bar of this court upon the indictment herein, the reading of said indictment being waived, each and all of said above named defendants, through counsel, demur to the said indictment herein, as set forth in the demurrer on file as of this date, and it is ordered by the court that the matter be passed until sometime in July, this year, a date to be hereinafter fixed by the court.

21 In the District Court of the United States for the District of Arizona.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* HARRY C. WHEELER, JOHN C. GREENWAY, GEORGE B. Wilcox, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, William H. Brophy, Reuben A. Clampitt, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout, defendants.	C–692. Demurrer.

Demurrer to first count.

And the said defendants, George B. Wilcox, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham,

James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell and H. H. Stout, by E. E. Ellinwood, John Mason Ross, and Cliton Mathews, their attorneys, come into court here, and, after hearing the said indictment read, say that the first count of the said indictment and the matters and things in the said first count contained are, as in the said first count alleged and set forth, not sufficient in law to compel them, the said defendants, to answer thereto, and this they are ready to verify.

22 Wherefore the said defendants pray judgment, and that by said court they may be dismissed and discharged of the said first count of the said indictment.

Demurrer to second count.

And the said defendant, George B. Wilcox, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgras, G. H. Dowell and H. H. Stout, by E. E. Ellinwood, John Mason Ross and Clifton Mathews, their attorneys, come into court here, and, after hearing the said indictment read, say that the second count of the said indictment and the matters and things in the said second count contained are, as in the said second count alleged and set forth, not sufficient in law to compel them, the said defendants, to answer thereto, and this they are ready to verify.

Wherefore the said defendants pray judgment, and that by said court they may be dismissed and discharged of the said second count of the said indictment.

Demurrer to third count.

And the said defendants, George B. Wilcox, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Brophy, Philip Tovrea, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout, by E. E. Ellinwood, John Mason Ross, and Clifton Mathews, their attorneys, come into court here, and, after hearing the said indictment read, say that the third count of the said indictment and the matters and things in the said third count contained are, as in the said their count alleged and set forth, not sufficient in law to

23 compel them, the said defendants, to answer thereto, and this they are ready to verify.

Wherefore the said defendants pray judgment, and that by said court they may be dismissed and discharged of the said third count of the said indictment.

Demurrer to fourth count.

And the said defendants, George B. Wilcox, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell and H. H. Stout, by E. E. Ellinwood, John Mason Ross and Clifton Mathews, their attorneys, come into court here, and, after hearing the said indictment read, say that the fourth count of the said indictment and the matters and things in the said fourth count contained are, as in the said fourth count alleged and set forth, not sufficient in law to compel them, the said defendants, to answer thereto, and this they are ready to verify.

Wherefore the said defendants pray judgment, and that by said court they may be dismissed and discharged of the said fourth count of the said indictment.

E. E. Ellinwood,
John Mason Ross,
and Clifton Mathews,
Attorneys for the said defendants, George B. Wilcox, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allizon, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout.

24 Endorsements: C-692. In the District Court of the United States for the District of Arizona. United States of America, plaintiff, vs. Harry C. Wheller, John C. Greenway, George B. Wilcox, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, William H. Brophy, Reuben A. Clampitt, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout, defendants. Demurrer. Filed May 28, 1918. Mose Drachman, clerk.

25 **In the District Court of the United States for the District of Arizona.**

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* HARRY C. WHEELER, JOHN C. GREENWAY, George B. Wilcox, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, William H. Brophy, Reuben A. Clampitt, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout, defendants.	C-692. Demurrer of Defendant Harry C. Wheeler.

Demurrer to first count.

And the said defendant, Harry C. Wheeler, by E. E. Ellinwood, John Mason Ross, and Clifton Mathews, his attorneys, comes into court here, and, after hearing the said indictment read, says that the first count of the said indictment and the matters and things in the said first count contained are, as in the said first count alleged and set forth, not sufficient in law to compel him, the said defendant, to answer thereto, and this he is ready to verify.

Wherefore, the said defendant prays judgment, and that by said court he may be dismissed and discharged of the said first count of the said indictment.

Demurrer to second count.

And the said defendant, Harry C. Wheeler, by E. E. Ellinwood, John Mason Ross, and Clifton Mathews, his attorneys, comes into court here, and, after hearing the said indictment read, says
26 that the second count of the said indictment and the matters and things in the said second count contained are, as in the said second count alleged and set forth, not sufficient in law to compel him, the said defendant, to answer thereto, and this he is ready to verify.

Wherefore the said defendant prays judgment, and that by said court he may be dismissed and discharged of the said second count of the said indictment.

Demurrer to third count.

And the said defendant, Harry C. Wheeler, by E. E. Ellinwood, John Mason Ross, and Clifton Mathews, his attorneys, comes into court here, and, after hearing the said indictment read, says that the third count of the said indictment and the matters and things

in the said third count contained are, as in the said third count alleged and set forth, not sufficient in law to compel him, the said defendant, to answer thereto, and this he is ready to verify.

Wherefore the said defendant prays judgment, and that by said court he may be dismissed and discharged of the said third count of the said indictment.

Demurrer to fourth count.

And the said defendant, Harry C. Wheeler, by E. E. Ellinwood, John Mason Ross, and Clifton Mathews, his attorneys, comes into court here, and, after hearing the said indictment read, says that the fourth count of the said indictment and the matters and things in the said fourth count contained are, as in the said fourth count alleged and set forth, not sufficient in law to compel him, the said defendant, to answer thereto, and this he is ready to verify.

Wherefore the said defendant prays judgment, and that by said court he may be dismissed and discharged of the said fourth count of the said indictment.

ELLINWOOD & ROSS,
and CLIFTON MATHEWS,
Attorneys for the said defendant, Harry C. Wheeler.

27 Endorsements: C–692. In the District Court of the United States for the District of Arizona. United States of America, plaintiff, vs. Harry C. Wheeler et al., defendants. Demurrer of Defendant Harry C. Wheeler, filed Oct. 21, 1918. Mose Drachman, clerk.

28 In the United States District Court for the District of Arizona. Minute entry made on October 21st, 1918. Honorable W. W. Morrow, circuit judge, presiding.

UNITED STATES OF AMERICA *vs.* HARRY C. WHEELER, JOHN C. GREENWAY, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Trovrea, William H. Brophy, Reuben A. Clampitt, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout, defendants.	Docket No. C–692. Tucson.

This matter came on this day for hearing upon defendant's demurrer to the indictment herein, Thomas A. Flynn, United States attorney, and Wm. C. Fitts, special assistant to Attorney General, appearing on behalf of the United States, and Clifton Mathews, of firm of Ellinwood & Ross, appearing on behalf of the defendants

named in the demurrer on file herein, and said demurrer was argued in part, the defendants having in open court waived arraignment and appeared by counsel on the said demurrers. The time for adjournment having arrived and this matter not having been completed, the court was adjourned and the matter continued until Tuesday, the 22nd day of October, A. D. 1918, at ten o'clock a. m.

29 In the United States District Court for the District of Arizona. Minute entry made on October 22nd, 1918. Honorable W. W. Morrow, Circuit Judge, Presiding.

UNITED STATES OF AMERICA *vs.* HARRY C. WHEELER, JOHN C. GREENWAY, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, William H. Brophy, Reuben A. Clampitt, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout, defendants.	Docket No. C-692. Tucson.

The argument of defendants' demurrer herein having been continued from a previous session of this court, comes now all the parties hereto and said argument is continued and completed and submitted to the court and thereupon the court takes the same under advisement.

30 In the United States District Court for the District of Arizona. Minute entry made on December 2nd, 1918. Honorable William H. Sawtelle, district judge, presiding.

UNITED STATES OF AMERICA *vs.* HARRY C. WHEELER, JOHN C. GREENWAY, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, William H. Brophy, Reuben A. Clampitt, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout, defendants.	Docket No. C-692. Tucson.

This case having been duly heard on the 21st day of October, A. D. 1918, and submitted to the court, Honorable W. W. Morrow, circuit

judge, presiding, and was by said judge taken under advisement, now on this 2nd day of December, A. D. 1918, it is by the court ordered, adjudged, and decreed, that the demurrer to the indictment and to each and every count thereof, be, and the same is hereby, sustained and the indictment ordered quashed, to which ruling of the court the United States attorney, Thomas A. Flynn, on behalf of the United States, then and there in open court duly excepted and in open court gave notice of appeal to the Supreme Court of the United States, and it is ordered that thirty days be given the said United States within which to prepare and tender its bill of exceptions and record on appeal.

31 In the District Court of the United States for the District of Arizona.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* HARRY C. WHEELER, JOHN C. GREENWAY, GEORGE B. WILCOX, WALTER DOUGLAS, ROBERT RAE, MILES MERRILL, GERALD SHERMAN, MICHAEL J. CUNNINGHAM, JAMES ALLISON, BASSETT T. WATKINS, LEMUEL C. SHATTUCK, MICHAEL J. BROPHY, PHILIP TORREA, WILLIAM H. BROPHY, REUBEN A. CLAMPITT, CHARLES H. HUNT, JAMES L. GANNON, VANCE M. JOHNSON, NELSON C. BLEDSOE, JOSEPH P. HODGSON, ALVAN W. HOWE, WILLIAM P. SIMS, HASCAL SNODGRASS, G. H. DOWELL, and H. H. STOUT, defendants.	No. C-692.

Indictment charging the defendants with a conspiracy in violation of section 19 of the Criminal Code of the United States of America 4, 1909 (33 Stat. 1088, 1092), (section 6, act of May 31, 1870, 16 Stat. 141; R. S. section 5508).

WILLIAM C. FITTS,
Special Assistant to the Attorney General.
THOMAS A. FLYNN,
United States Attorney,
Attorneys for the United States.
E. E. ELLINWOOD,
JOHN MASON ROSS,
and CLIFTON MATHEWS,
Attorneys for the defendants, George B. Wilcox, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Torrea, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout.

32 Morrow, *Circuit Judge:*

This is a demurrer to an indictment charging the defendants with a conspiracy in violation of section 19 of the Criminal Code of the United States.

The objection is that the facts stated in the indictment do not charge an offense within the constitutional provisions of that section.

The section provides as follows:

"Sec. 19. If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States."

The section was originally contained in section 6 of "An act to enforce the right of citizens of the United States to vote in the several States of the Union and for other purposes," approved May 31, 1870 (16 Stat. 140–141). It was afterwards contained in the Revised Statutes of the United States enacted June 22, 1874, as section 5508 in chapter seven, entitled "Crimes against the elective franchise and civil rights of citizens." The section is now contained in chapter three of the Criminal Code bearing the same title as chapter seven containing section 5508 in the Revised Statutes did prior to the enactment of the Criminal Code.

This case is known to the public as the "Bisbee deportation case." It involves an alleged conspiracy on the part of the defendants continuing from the first to and including the twelfth day of July, 1917, to deport from Bisbee, in the State of Arizona, two hundred
33 and twenty-one persons to the State of New Mexico. The conspiracy was plainly a single act on the part of the defendants against all the persons to be deported, but for the purpose of classifying such persons with respect to their citizenship and liability to the selective draft, the indictment has been split up into four counts so as to charge the offense as a conspiracy directed against different classes of persons. This may be done subject to certain limitations. (United States v. Howell, 65 Fed. 402; Orth v. United States, 252 Fed. 568.) These four counts classify the persons against whom the conspiracy was directed as follows:

In the first count the whole number of two hundred and twenty-one persons are described as citizens of the United States.

In the second count twenty-five of this number of persons are described as citizens of the United States residing in but not citizens of the State of Arizona.

In the third count one hundred and ninety-six of the persons mentioned in the first count are described as citizens of the United

States and of the State of Arizona, residing in Arizona. There is also in this count a name not mentioned in the first count, making the number in this class one hundred and ninety-seven. No objection is made to the indictment on this account.

In the fourth count sixty persons mentioned in the first count are described as citizens of the United States and of the State of Arizona, residing in said State, who were male persons between the ages of twenty-one and thirty, required by the proclamation of the President of the United States, dated May 18th, 1917, to present themselves on June 5th, 1917, and who did present themselves for and submit to registration under the provisions of the act of Congress approved May 18th, 1917.

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It is alleged in the first count that the two hundred and twenty-one persons against whom the conspiracy of the defendants was directed "were citizens of the United States, residing in the county of Cochise, in the State and in said district of Arizona, in the peace of said county, State, and district, and then and there as such citizens of the United States were exercising the right and privilege pertaining to citizens of said State peaceably there to reside and remain and to enjoy the blessings of liberty rather than in another State of the United States, and the right and privilege pertaining to citizens of said State to be immune from unlawful deportation from that State to another State; and then and there were not persons charged in any State with treason, felony, or other crime, who had fled from justice of said State and had been found in said State of Arizona, or persons then in said State of Arizona who had committed crimes or offenses against the United States in another State, or in other States, or persons not sentenced or imprisoned in a prison or prisons located in another State or any other States or persons subject to extradition to a foreign country or foreign countries."

It is charged that the defendants conspired and confederated together "to injure, oppress, threaten, and intimidate said citizens of the United States in the free exercise and enjoyment by them respectively of certain rights and privileges secured to them as such citizens by the Constitution and laws of the United States; that is to say, the rights and privileges aforesaid." The rights and privileges "aforesaid" were the "right and privilege pertaining to citizens of the said State peaceably there to reside and remain and to enjoy the blessings of liberty rather than in another State of the United States and the right and privilege pertaining to citizens of said State to be immune from unlawful deportation from that State to another State." It is further charged that "said unlawful and felonious conspiracy, combination, confederation, and agreement then and there was one for injuring, oppressing, threatening, and intimidating said citizens of the United States in the free exercise and enjoyment of said rights and privi-

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leges by unlawfully and with force and arms driving and conveying said citizens in a body from their said places of residence in said State of Arizona to an' into another State, to wit, New Mexico, and threatening said citizens with great bodily harm and death if they should return or endeavor to return to said State of Arizona."

It is further charged that certain of the defendants in and for executing such conspiracy did certain over' acts set forth in the count.

The second count is the same as the first count, except that it is alleged that the twenty-five persons against whom the conspiracy was directed are described as citizens of the United States residing in but not citizens of the State of Arizona who "were exercising the right and privilege pertaining to citizens of other States of the United States other than said State of Arizona, peaceably there to reside and remain and to enjoy the blessings of liberty and the right and privilege of being immune from unlawful deportation from that State to another State." The charge in this count is that
36 the defendants conspired and confederated together "to injure, oppress, threaten, and intimidate the citizens in this count named in the free exercise and enjoyment by them, respectively, of certain rights and privileges, secured to them as such citizens by the Constitution and laws of the United States, that is to say, the rights and privileges in this count aforesaid." The rights and privileges "in this count aforesaid" are the rights and privileges "pertaining to citizens of other States of the United States other than said State of Arizona peaceably there to reside and remain and enjoy the blessings of liberty and the right and privilege of being immune from unlawful deportation from that State to another State."

The third count is the same as the first count, except that it is alleged that the one hundred and ninety-seven persons therein named, against whom the conspiracy of the defendants was directed, were citizens of the United States and of the State of Arizona.

The fourth count is substantially the same as the first count, except that it is alleged that the sixty persons against whom the conspiracy was directed are described as "citizens of the United States and of the State of Arizona residing in the county of Cochise, in said State, and in said district of Arizona, and were, respectively, male persons between the ages of 21 and 30, * * * who 'ere then and there required by the proclamation of the President of the United States, dated May 18, 1917, to present themselves, and did present themselves for and submit to registration under the provisions of the act of Congress approved May 18, 1917, * * * at divers registration places in divers precincts, * * * these precincts being the precincts where the citizens mentioned in this count of this indictment had their permanent homes and actual places of legal residence." Against these persons so subject to the selective draft it is charged

that the defendants conspired "to injure, oppress, threaten, and intimidate in the free exercise and enjoyment by them, respectively, of the certain right and privilege secured to them as such citizens by the Constitution and laws of the United States, that is to say, the right and privilege in the count aforesaid. The right and
37 privilege in the count aforesaid was "the right and privilege pertaining to citizens who had presented themselves for, and who had submitted to registration as aforesaid, of remaining unmolested in their said permanent homes and actual places of legal residence subject to draft and until drafted under the provisions of said act of May 18, 1917, into the military service of the United States."

The act did not require registrants under the act to remain in their permanent homes and actual places of legal residence until drafted unto the military service of the United States, nor did the selective service regulations prescribed by the President of the United States make such a requirement, but, on the contrary, the location of the registrant elsewhere than at his permanent home and actual place of legal residence at the time of his call into the military service was provided for in such regulations and the absence from home of the registrant in no way prejudiced his rights under the act or under the regulations of the President.

Stripped of the verbiage required to state the various elements of the alleged conspiracy, we find that the injury charged in the four counts of the indictment may for the purpose of the present inquiry be reduced to the single charge of a conspiracy to injure, oppress, threaten, and intimidate certain citizens of the United States in the free exercise and enjoyment of the right and privilege pertaining to citizens of the State of Arizona, peaceably there to reside and remain and to enjoy the blessings of liberty rather than in another State of the United States and the right and privilege pertaining to citizens of said State to be immune from unlawful deportation from that State to another State.

The offense which the defendants are charged to have conspired to commit is then an offense against the right and
38 privilege of the persons conspired against secured to them as citizens of the State of Arizona, and upon examining the law of that State we find that the charge in the indictment is correct in both form and substance and that protection has been provided for such persons under the police power of the State. Section 186 of the Penal Code of the State of Arizona provides:

"Every person who forcibly * * * takes * * * any person in this State and carries him into another * * * State * * * is guilty of kidnapping."

for which a punishment has been provided. Another aspect of the case is provided for in section 205 of the Penal Code, where it is enacted: "False imprisonment is the unlawful violation of the personal liberty of another," for which a punishment has been provided.

The right of protection furnished by this police power of the State is a right reserved to the State under the tenth amendment of the Constitution of the United States providing that:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States, respectively, or to the people."

Whether this State protection is exclusive or not in a particular instance depends upon the question of whether the power has also been granted by the Constitution to the General Government expressly or by necessary implication.

Congress has provided a statute against kidnapping, to be found in sections 268, 269, 270, 271 of the Criminal Code (R. S., secs. 5525, 5526, 5527, and the act of June 23, 1874), but this legislation is expressly limited to the constitutional authority of Congress to legislate against slavery, involuntary servitude, and peonage under the thirteenth and fourteenth amendments to the Constitution. (The Peonage Cases, 123 Fed., 671; Clyatt vs. U. S., 197 U. S., 207.)

This amounts to a legislative declaration that kidnapping not so limited was left to be dealt with by the States under their police power. Expressio unis est exclusio alturis.

39 The question is broadly stated in the brief of the Assistant Attorney General in support of the indictment in this case as follows:

"We admit that the fundamental rights of a person as such or of a citizen as such are not secured to him by the Constitution of the United States. The rights to life, liberty, and the pursuit of happiness, for instance, existed before the Constitution, were not created by it, and hence are not secured by it, but by the constitution and laws of the several States. If, however, these fundamental rights are brought into connection with the Federal Government, the situation is changed and the right then becomes one secured by the Constitution of the United States."

He then proceeds to explain what he means by "fundamental rights" being "brought into connection with the Federal Government."

"For example," he says, "ordinarily the right to remain in any one place or to move freely from place to place is not secured by the Constitution of the United States, but if State boundaries are brought into the question, if the right claimed be to remain in one of the several States of the Federal Union as distinguished from another, or to move freely from one of the several States into another State of the Federal Union, it then becomes a right secured by the Constitution of the United States." Citing Crandall v. Nevada, 6 Wall., 35; U. S. v. Patrick, 54 Fed., 338–347.

In the case of Crandall v. Nevada, the question related to a capitation tax of $1.00 imposed by the statute of the State of Nevada "upon every person leaving the State by any railroad, stage-coach or other vehicle engaged or employed in the business of transporting passengers for hire." The supreme court of the State held that this tax was not

an impost on exports nor an interference with the power of Congress to "regulate commerce among the several States" and upheld the statute. The case was taken to the Supreme Court of the United States, where the question whether the tax was an impost on exports or was an interference with the powers of Congress to regulate commerce among the several States were passed over and the tax held to be the exercise of an authority by the State affecting the functions of the Federal Government and inconsistent with its constitutional operations. In support of this doctrine, the court refers to the extensive operations of the Federal Government conducted through its various departments with the citizens of the several States and the necessity that such communications should be free and open
40 without any obstruction on the part of any of the States and the court finds that the right of the State to impede or embarrass the constitutional operations of that Government or the rights which the citizens hold under it has been uniformly denied. The court quotes from the opinion of Chief Justice Marshall in the case of McCullough v. Maryland (4 Wheaton, 316), finding:

"That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very means, is declared to be supreme over that which exerts the control, are propositions not to be denied. If the States may tax one instrument employed by the Government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent rights; they may tax the papers of the custom-house; they may tax judicial process; they may tax all the means employed by the Government to an excess which would defeat all the ends of the Government. This was not intended by the American people. They did not design to make their Government dependent on the States."

Manifestly this finding of the Supreme Court that the State has no power to obstruct or burden the operations of the Federal Government, has no application to the facts alleged in the present indictment. The facts here stated do not relate to any act of the State and do not charge any intent or purpose on the part of the defendants to obstruct or burden the operations of the Federal Government or to obstruct or burden the transportation of passengers from one State to another. There is a recital in the indictment relating to the crossing of the State boundary by the persons against whom the conspiracy was directed. Treating this recital as a charge, it does not state any fact from which an inference may be drawn that it was the intent or purpose of the defendants to burden or in any way obstruct or interfere with the operations of the Government to obstruct, burden, or impede the transportation of passengers from one
41 State to another, or to prevent or obstruct the persons against whom the conspiracy is alleged to have been directed in moving freely from Arizona into any other State.

We do not see how the decision of the Supreme Court in Crandall v. Nevada can be held as decisive of the present case.

In the case of U. S. v. Patrick (54 Fed., 338), the defendants were indicated for conspiracy and murder under the first clause of sec. 5508 (sec. 19 of the Criminal Code) and sec. 5509 of the Revised Statutes.

The conspiracy charged against the defendants under sec. 5508 was to injure, oppress, threaten, and intimidate certain designated citizens of the United States in the free exercise and enjoyment of a right and privilege secured them by the Constitution and laws of the United States; three of these persons are described as deputy collectors of internal revenue of the United States and two as deputy marshals of the United States, and another as a person summoned as a "posse."

The particular right and privilege alleged to have been secured to these persons by the Constitution and laws of the United States, and in the free exercise and enjoyment of which the conspiracy was formed and prosecuted to injure, oppress, threaten, and intimidate, was the duty, right, and privilege on the part of the deputy collectors of internal revenue to make searches for and seizures of distilled spirits upon which the tax imposed by the laws of the United States had not been paid, and the duty on the part of the deputy marshals and of the person summoned as a "posse" to aid and assist in the search for and seizure of such distilled spirits, and the arrest of persons who might be discovered in the possession of such distilled spirits. All engaged in the performance of official duties for and on behalf of the Federal Government.

42 In support of the demurrer to the indictment in that case, it was contended that the statute had for its object the protection of citizens in the free exercise and enjoyment of the rights and privileges secured to them as citizens by the Constitution and not for the protection of officers of the United States engaged in the performance of duties as such. To this contention, Judge Jackson, afterwards a justice of the Supreme Court, replied:

"In respect to citizenship, and the rights and privileges incident thereto, it should be borne in mind that we have in the political system of this country, since the adoption of the fourteenth amendment to the Constitution, if such did not previously exist, both a national and State citizenship, corresponding with our dual form of government, State and Federal, which owes allegiance to and is subject to the jurisdiction and entitled to the protection of each government within the sphere of their respective sovereignties. 'The same person may be at the same time a citizen of the United States and a citizen of the State; but his rights of citizenship under one of these governments will be different from those he has under the other. The Government of the United States, although it is, within the scope of its powers, supreme, and beyond the States, can neither grant nor secure to its citizens rights or privileges which are not

expressly or by implication placed under its jurisdiction. All that can not be so granted or secured are left to the exclusive protection of the States.' (U. S. v. Cruikshank, 92 U. S., 542.) Speaking generally, the Constitution and laws add nothing to the rights of one citizen as against another, nor do they aim to protect one citizen from personal injury or violence by another within the limits of a State. These are matters coming properly within the sovereignty and jurisdiction of the States. But in respect to rights and privileges derived from the United States or secured by their constitution, or laws and exercised by their authority, within the scope of their powers and the sphere of their jurisdiction the General Government may, under the legislation of Congress, protect its citizens. * * * The statute applies to any citizen in the exercise 'of any right or privilege secured to him by the Constitution or laws of the United States.' This language does not indicate or fairly imply that the right or privilege secured and exercised must be such right or privilege as is common to all citizens of the United States as such."

The case reviews the cases upon the question and referring to the fundamental rights which belong to any citizen as a member of society and who as such is protected by the State, quotes from
43 U. S. v. Cruikshank (92 U. S., 553-554), where the Supreme Court said:

"Sovereignty for this purpose rests alone with the States. It is no more the duty or within the power of the United States to punish for a conspiracy to falsely imprison or murder within a State than it would be to punish for false imprisonment or murder itself."

The court concludes that sections 5508 and 5509 are confined to rights and privileges which are created or secured by the Constitution wherein depends the authority of Congress to legislate for the protection of its citizens and that such authority can never be allowed to extend to offenses affecting rights and privileges of citizens which exist by State authority independent of the Constitution and laws of the United States. The indictment was accordingly held sufficient in charging a conspiracy to injure, oppress, threaten, and intimidate citizens in the free exercise or enjoyment of the rights and privileges secured to them as agents or officers of the Government discharging functions conferred or exercising rights and privileges secured by its laws and for its benefit.

It is clear that this case does not support the present indictment. The persons against whom the conspiracy of the defendants is alleged to have been directed in this case were not officers of the Federal Government, nor were they exercising any authority under that Government. In the Patrick case, had the persons conspired against had no other claim to the protection of the United States than that of being citizens of the United States with the rights pertaining to the citizens of the State, as alleged in the present indictment, the indictment in that case would clearly have been

held insufficient for the reason as there stated that such protection would rest alone in the State.

We do not overlook Judge Jackson's reference to Baldwin vs. Franks on page 347, and his comment that "If the party affected or injured by the conspiracy had been a citizen it is clear that the offense charged would have been embraced by the provisions of said section," but this comment can not prevail against what we believe to be the plain meaning of the decision of the Supreme Court in Baldwin vs. Franks, as we shall show when we reach that case in this review.

44 To repeat: "It is no more the duty or in the power of the United States to punish for a conspiracy to falsely imprison or murder in a State than it would be to punish for false imprisonment or murder itself."

The attorney for the United States cites the case of U. S. vs. Waddell (112 U. S. 76), holding that the exercise by a citizen of the United States of the right to make a homestead entry upon unoccupied land and to reside thereon and be protected from personal violence with respect to such residence is the exercise of a right secured by the Constitution and laws of the United States, and by analogy that such authority secures to a citizen the right to be and remain in a particular place under the protection of the Federal Government against violence on account of such residence. The decision of the court carefully excludes that construction of the statute. The court says:

"The right here guaranteed is not the mere right of protection against personal violence. This, if the result of an ordinary quarrel or malice, would be cognizable under the laws of the State and by its courts. But it is something different from that. It is the right to remain on the land in order to perform the requirements of the act of Congress, and, according to its rules, perfect his incipient title."

In U. S. v. Logan (144 U. S. 263–285), the defendants were charged under section 5508 (Sec. 19 of the Criminal Code) with a conspiracy to injure and oppress certain citizens of the United States who were in the custody of the Deputy United States marhsal under a lawful committment to answer the indictments in a Federal court for offenses against the laws of the United States. The charge was that the defendants conspired to injure and oppress the persons in the custody of the deputy United States marshal in the free exercise and enjoyment of the right to be protected from violence while in said custody. Upon this question the court said:

"The prisoners were in the exclusive custody and control of the United States, under the protection of the United States, and in the peace of the United States. There was a coextensive duty on the part of the United States to protect against lawless violence persons so within their custody, control, protection and peace; and a corresponding right of those persons secured by the Constitution and laws

of the United States, to be so protected by the United States. If the officers of the United States charged with the performance
45 of the duty in behalf of the United States, of affording that protection and securing that right, neglected or violated their duty, the prisoners were not the less under the shield and panoply of the United States."

The indictment was held sufficient, not because the persons conspired against were alleged to be citizens of the United States, but because it was charged that they were in the custody of the deputy United States marshal and in that relation they were entitled to the protection of the United States.

The case of In re Quarles (158 U. S. 532–536) was a conspiracy to injure, and oppress a citizen of the United States in the free exercise and enjoyment of the right and privilege to report to a deputy United States marshal that a person named had violated the internal revenue laws of the United States by carrying on the business of distilling without having given bond as required by law. The court held that "the right of the private citizen who assists in putting in motion the course of justice, and the right of the officers concerned in the administration of justice, stand upon the same ground just as do the rights of citizens voting and of officers elected."

The court quotes from the case of Ex Parte Yarbrough (110 U. S. 651–662), where the court said:

"The power in either case arises out of the circumstances that the function in which the party is engaged, or the right which he is about to exercise, is dependent on the laws of the United States. In both cases, it is the duty of that Government to see that he may exercise this right freely, and to protect him from violence while so doing, or on account of so doing. This duty does not arise solely from the interest of the party concerned, but from the necessity of the Government itself, that its service shall be free from the adverse influence of force and fraud practiced on its agents, and that the votes by which its members of Congress and its President are elected shall be the free votes of the electors, and the officers thus chosen the free and uncorrupted choice of those who have the right to take part in that choice."

46 The right of the citizens of the United States to vote had reference to the act of May 31, 1870, to enforce the right of citizens of the United States to vote in the several States of the Union. Section 19 of the Criminal Code now under consideration was section 6 of that act and as there contained had reference to the right of a citizen of the United States to vote.

In Motes v. U. S. (178 U. S., 458–462), the conspiracy was of the same character as in the Quarles case, but the case involved other questions. So far as the right of the person conspired against to give information to an officer of the Government of the violation of the internal revenue laws, the court said:

"It was the right and privilege of" [the person conspired against] "in return for the protection enjoyed under the Constitution and

laws of the United States to aid in the execution of the laws of this country by giving information to the proper authorities of violation of its laws. That right and privilege may properly be said to be secured by the Constitution and laws of the United States, and it was competent for Congress to declare a conspiracy to injure, oppress, threaten, and intimidate a citizen because of the exercise by him of such right and privilege to be an offense against the United States."

It follows from this and other cases that might be cited, that the United States extends its jurisdiction and protection to its officers, agents, and employees against a conspiracy to injure, oppress, threaten, or intimidate them in the perfromance of their official duties. This jurisdiction and protection is also extended to citizens of the United States in the exercise of the right and privilege to freely pass from one State to another or to the seat of government at Washington, to persons residing upon and making homestead entries upon public lands, and to persons engaged in service under or in connection with the constitutional operations of the Government.

47 The United States also extends its jurisdiction and protection against any action of the State which impairs the constitutional privileges and immunities of citizens of the United States or which injures them in life, liberty, or property, without due process of law, or which denies to any of them the equal protection of the laws, secured to them by the fourteenth amendment. In U. S. v. Cruikshank (92 U. S., 542–554), the Supreme Court in discussing the subject said:

"The fourteenth amendment prohibits a State from depriving any person of life, liberty, or property, without due process of law; but this adds nothing to the rights of one citizen as against another. It simply furnishes an additional guaranty against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society. * * * The fourteenth amendment prohibits a State from denying to any person within its jurisdiction the equal protection of the laws; but this provision does not, any more than the one which precedes it and which we have just considered, add anything to the rights which one citizen has under the Constitution against another. The equality of the rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle, if within its power. That duty was originally assumed by the States; and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the amendment guaranties, but no more. The power of the National Government is limited to the enforcement of this guaranty."

In U. S. v. Harris (106 U. S., 629–639) the court refers to the provisions of the fourteenth amendment in the following terms:

"The language of the amendment does not leave this subject in doubt When the States has been guilty of no violation of its pro-

visions; when it has not made or enforced any law abridging the privileges or immunities of citizens of the United States: when no one of its departments has deprived any person of life, liberty, or property, without due process of law, nor denied to any person within its jurisdiction the equal protection of the laws; when, on the contrary, the laws of the State, as enacted by its legislative and construed by its judicial and administered by its executive departments, recognize and protect the rights of all persons, the amendment imposes no duty and confers no power upon Congress."

48 In the Civil Rights cases (109 U. S. 311-317) the court again discusses the subject, adding emphasis that it is a limitation upon the action of the State and does not deal with the invasion of the individual rights, the court says:

"It does not invest Congress with power to legislate upon subjects which are within the domain of State legislation; but to provide modes of relief against State legislation or State action, of the kind referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of State laws, and the action of State officers, executive or judicial, when these are subversive of the fundamental rights specified in the amendment. * * * In this connection it is proper to state that civil rights, such as are guaranteed by the Constitution against State aggression, cannot be impaired by the wrongful acts of individuals, unsupported by State authority in the shape of laws, customs or judicial or executive proceedings. The wrongful act of an individual, unsupported by any such authority is simply a private wrong, or a crime of that individual; an invasion of the rights of the injured party, it is true, whether they affect his person, his property or his reputation; but if not sanctioned in some way by the State, or not done under State authority, his rights remain in full force and may presumably be vindicated by resort to the laws of the State for redress."

The United States also extends its jurisdiction and protection against State action by one State discriminating against citizens of another State. Section 2 of Article 4 of the Constitution provides:

"Citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

The second count of the indictment seems to have had this constitutional provision in view when it charged that certain citizens of the United States residing in Arizona against whom the conspiracy was directed were exercising the rights pertaining to citizens of other States of the United States, but this provision of the Constitution does not apply to acts of individuals. It is a limitation upon the action of the State. (U. S. v. Harris, 106 U. S. 639, supra.)

49 See also Le Grand v. U. S. (12 Fed. 577). An opinion by Mr. Justice Woods, who wrote the opinion in the latter case while sitting as circuit justice in the Eastern District of Texas, and

who as a justice of the Supreme Court wrote the opinion in U. S. vs. Harris, supra. See also U. S. v. Morris (125 Fed. 322).

The prosecution on the oral argument relied very confidentially upon the case of Baldwin vs. Franks (120 U. S. 678, heretofore referred to, as supporting the sufficiency of the indictment in this case. As we understand that case, instead of supporting the sufficiency of this indictment, the opinion of the court points very clearly and distinctly to its insufficiency. The conspiracy of the defendants in that case was to drive and expel certain Chinese aliens from the town of Nicolaus, in the State of California, where they were engaged in legitimate business and labor to earn a living under and by virtue of the treaties existing between the Government of the United States and the Emperor of China. The treaty of November 17, 1880, referred to, provided that the United States was to exert all its power to devise measures for the protection of Chinese laborers and Chinese of any other class residing in the United States "and to secure to them the same rights, privileges, immunities, and exceptions as may be enjoyed by citizens or subjects of the most favored nations, and to which they are entitled by treaty." The Chinese persons against whom the conspiracy of the defendants in that case was directed appealed to the jurisdiction of the United States court for the punishment of the defendants under the provisions of the statute, which included the section of the Revised Statutes here in controversy.

50 The question arose: "Who are the citizens of the United States to which the statute referred?" This was a controlling question under the statute and a most important inquiry under the treaty, since the Chinese persons conspired against were entitled to appeal to the United States for the same protection as "enjoyed by the citizens or subjects of the most favored nations." The court after referring to a number of cases on the subject, says:

"The persons on whom the wrong to be punishable must be inflicted is described as 'citizens' * * * Sometimes used in popular language to indicate the same thing as resident, inhabitant, or person. That it is not so used in section 5508 in the Revised Statutes is quite clear, if we revert to the original statute from which this section was taken. That statute was the act of May 31, 1870, c. 114, 16 Stat., 140, 'to enforce the right of citizens of the United States to vote in the several States of this Union, and for other purposes.' It is the statute which was under consideration as to some of its sections in United States vs. Reese, supra, and from its title, as well as its text, it is apparent that the great purpose of Congress in its enactment was to enforce the political rights of citizens of the United States in the several States. Under these circumstances there can not be a doubt that originally the word 'citizen' was used in its political sense, and as the Revised Statutes are but a revision

and consolidation of the statutes in force December 1, 1873, the presumption is that the word has the same meaning there that it had originally.

"This particular section is a substantial reenactment of section 6 of the original act, which is found among the sections that deal exclusively with the political rights of citizens, especially their right to vote, and were evidently intended to prevent discriminations in this particular against voters on account 'of race, color, or previous condition of servitude.' Sometimes, as in sections 3 and 4, the language is broader than this, and therefore, as decided in United States v. Reese, those sections are inoperative, but still it is everywhere apparent that Congress had it in mind to legislate for citizens, as citizens, and not as mere persons, residents, or inhabitants."

This opinion is a clear and distinct interpretation of the statute, declaring that it deals exclusively with the political rights of citizens especially establishing their right to vote and not with the rights of citizens as mere persons, residents, or inhabitants. In the more recent case of United States vs. Bathgate (246 U. S., 220),
51 the court reiterated its opinion that "Section 19 of the Criminal Code of course now has the same meaning as when enacted as section 6, act of May, 1870."

In the latter case, the court states as pertinent to the construction of this section the rule referred to by the Supreme Court in U. S. vs. Lacher (134 U. S., 624–628), where the court said:

"That there must be no constructive offenses and before a man can be punished his case must be plainly and unmistakably within the statute."

The attorneys for the United States contend that these cases, as here interpreted, do not determine the questions involved in this demurrer, for the reason that the conspiracy alleged in the indictment was to extend in its effect across the border of the State of Arizona into the State of New Mexico and involve interstate transportation, a subject over which the United States has jurisdiction and extends its protection in certain specified particulars, but this is not sufficient to bring into play the Federal jurisdiction punishing acts of the character described in the indictment. There must be a statute of the United States to that effect enacted by Congress pursuant to constitutional authority either express or clearly implied.

It is nowhere stated in this section or in the act in which it was originally passed or in the statutes as revised, that the right to be enforced was a right pertaining to interstate transportation. We have therefore no basis from which we can draw a clear or necessary implication that the facts stated in the indictment come within the constitutional scope of section 19.

52 Why has this prosecution been brought in the Federal court rather than in the State court, which has unquestioned jurisdiction of the offense charged? The Assistant Attorney General stated

on the oral argument that it might be because there was such bias and prejudice in the community where the offense was committed against the persons complaining of the offense that the law of the State could not be enforced against the defendants. This is not a legal or constitutional ground of Federal jurisdiction, although frequently urged as a ground of Federal legislation covering subjects where local authority is unequal to the task of administering equal and exact justice to all, but it is difficult to understand the explanation in this case, if the large body of persons against whom the conspiracy is charged to have been directed, were in fact bona fide citizens of the United States as claimed. Those that were citizens by naturalization proceedings were each required to prove to the satisfaction of the court by two witnesses at the time of naturalization that for five years prior thereto he had behaved as a man of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same. Those that were native-born citi*zens* should certainly have possessed an equally good moral character; have been equally loyal to the Government of the United States, and equally attached to the principles of the Constitution of the United States, as those who had been naturalized. If this was the character of persons against whom the conspiracy was directed, we cannot understand why they could not submit their character and conduct
53 to a tribunal in the community where they resided in proceedings against others for an open violation of the State law. The situation is, indeed, a lamentable one, and one to be greatly deplored, but it ought not to influence this court to enlarge the statute to include an offense not within its constitutional authority.

As stated by the Supreme Court in Hammer vs. Dagenhart, recently decided —— U. S. ——:

"This court has not more important function than that which devolves upon it the obligation to preserve inviolate the constitutional limitations upon the exercise of authority, Federal and State, to the end that each may continue to discharge, harmoniously with the other, the duties intrusted to it by the Constitution."

It follows from these considerations that the demurrer to the indictment must be sustained and the indictment quashed and it is so ordered.

Endorsements: C-692, Tucson. In the United States District Court for the District of Arizona. United States of America vs. Harry C. Wheeler et al., defendants. Filed December 2nd, 1918. Mose Drachman, clerk.

54 In the Supreme Court of the United States.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
vs.
HARRY C. WHEELER, GEORGE B. WILCOX, WALTER Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout, defendants in error.

Petition for writ of error.

Now comes the United States of America, by Thomas A. Flynn, the United States attorney for the District of Arizona, and respectfully represents that heretofore and on the 11th day of May, 1918, an indictment was duly found and returned in the District Court of the United States for the District of Arizona, at Tucson, in said district, by the grand jurors of the United States for said district, at the May, 1918, term of said court, in and by which indictment the following named persons, to wit, Harry C. Wheeler, John C. Greenway, George B. Wilcox, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, William H. Brophy, Reuben A. Clampitt, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout were charged in four counts with certain alleged violations of the laws of the United States, to wit,
55 of section nineteen of the Criminal Code of the United States;

That thereafter and on the 21st day of October, 1918, the following-named persons, mentioned and named in said indictment, to wit, Harry C. Wheeler, George B. Wilcox, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout, were duly arraigned before the said District Court and each and all of the said persons so arraigned did thereupon demur to the said indictment upon certain grounds and for certain reasons set forth in the written demurrer on file in the said district court;

That thereupon and on said 21st day of October, 1918, the said demurrer came on for argument, and was duly argued before the

said District Court, by counsel appearing for the said demurrants and for the United States;

That thereafter and on the 2nd day of December, 1918, the said District Court did duly make and enter a certain decision, order, and judgment in said cause, in and by which decision, order, and judgment it did order an direct that the said demurrer be sustained and the said indictment quashed as against the said demurring parties, which said order was duly entered of record in said District Court;

That the said decision, order, and judgment of the said District Court sustaining the said demurrer to the said indictment, and to all the counts thereof, and quashing the said indictment and the several counts thereof, was based on the construction of the statute upon which the said indictment was founded, to wit, the said section nineteen, and your petitioner verily believes that the said
36 decision, order, and judgment is erroneous and prejudicial to the interests of the United States of America, and that in said decision, order, and judgment sustaining said demurrer and quashing said indictment, and each of the counts thereof, the said District Court erred, to the manifest prejudice of the United States;

That your petitioner tenders herewith its assignments of errors, which are filed with this petition.

Wherefore your petitioner prays that a writ of error issue in this behalf out of the Supreme Court of the United States, directed to the said District Court of the United States for the said District of Arizona, commanding that a transcript of the records and proceedings of this cause, duly authenticated, be sent to the Supreme Court of the United States, to the end that the said decision, order, and judgment sustaining said demurrer, and quashing said indictment, may be reviewed by the said Supreme Court and the error therein, if any hath been, be corrected and speedy justice be done in that behalf.

WILLIAM C. FITTS,
Special Assistant to the Attorney General.
THOMAS A. FLYNN,
United States Attorney for the District of Arizona.

Endorsements: In the Supreme Court of the United States. United States of America, plaintiff in error, vs. Harry C. Wheeler, George R. Wilcox, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout, defendants in error. Petition for writ of error. C-692, Tucson. Filed December 24th, 1918. Mose Drachman, clerk.

57 In the Supreme Court of the United States.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
vs.
HARRY C. WHEELER, GEORGE B. WILCOX, WALTER Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout, defendants in error.

Assignments of error.

Now comes the United States of America, by Thomas A. Flynn, the United States attorney for the District of Arizona, and says that in the decision, order, and judgment made and entered in the District Court of the United States for the District of Arizona on the 2nd day of December, 1918, sustaining the demurrer of the above-named defendants in error to the said indictment and each of the counts thereof, and quashing said indictment as against said defendants in error, and each of the counts thereof, the said District Court committed manifest error, to the great prejudice of the United States, in this, to wit:

1. The court erred in sustaining the demurrer to the indictment.
2. The court erred in quashing the indictment.
3. The court erred in sustaining the demurrer to the first count in the indictment.
4. The court erred in sustaining the demurrer to the second count in the indictment.

58 5. The court erred in sustaining the demurrer to the third count in the indictment.

6. The court erred in sustaining the demurrer to the fourth count in the indictment.
7. The court erred in holding the indictment insufficient in law.
8. The court erred in holding that the indictment does not charge any offense against the laws of the United States.
9. The court erred in construing section 19 of the Criminal Code of the United States of March 4, 1909, as not covering and embracing as an offense the matters and things set forth and charged in the said indictment.

Wherefore, by reason of the manifest errors aforesaid, the said United States of America prays that the said decision, order, and judgment sustaining said demurrer and quashing said indictment be in all things annulled, reversed, and held for naught.

WILLIAM C. FITTS,
Special Assistant to the Attorney General.
THOMAS A. FLYNN,
United States Attorney for the District of Arizona.

Endorsements: In the Supreme Court of the United States. United States of America, plaintiff in error, vs. Harry C. Wheeler, George B. Wilcox, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout, defendants in error. Assignments of error. C-692, Tucson. Filed December 24th, 1918. Mose Drachman, clerk.

59 In the Supreme Court of the United States.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR, vs. HARRY C. WHEELER, GEORGE B. WILCOX, WALTER DOUGLAS, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout, defendants in error.	Præcipe for transcript of record.

To Mose Drachman, clerk United States District Court for the District of Arizona:

You are hereby requested to include in the transcript of the record in the above-entitled matter, the following proceedings, pleadings, and papers, to wit:

1. Indictment.
2. Demurrers.
3. Minute entries.
4. Order and judgment of court sustaining demurrers and quashing indictment.
5. Opinion rendered by district court on order and judgment sustaining demurrers and quashing indictment.
6. Petition for writ of error.
7. Assignment of error.
8. Writ of error (Original to be sent).
9. Citation (original to be sent).
10. Acknowledgment of service of citation (original to be sent).
11. This præcipe.

WILLIAM C. FITTS,
Special Assistant Attorney General.
THOMAS A. FLYNN,
United States Attorney.

Endorsements: In the Supreme Court of the United States. United States of America, plaintiff in error, vs. Harry C. Wheeler,

George Wilcox, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout. Præcipe for transcript of record. C–692, Tucson. Filed Dec. 24th, 1918. Mose Drachman, clerk.

60 In the United States District Court for the District of Arizona.

UNITED STATES OF AMERICA *vs.* HARRY C. WHEELER, JOHN C. GREENWAY, WALTER Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, William H. Brophy, Reuben A. Clampitt, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout, defendants.	Docket No. C–692. Tucson.

Clerk's certificate to transcript of record.

UNITED STATES OF AMERICA,
District of Arizona, ss:

I, Mose Drachman, clerk of the United States District Court for the District of Arizona, do hereby certify that the foregoing pages, numbered one to fifty-nine, inclusive, constitute and are a true, complete, and correct copy of the record in the case of United States of America v. Harry C. Wheeler, John C. Greenway, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, William H. Borphy, Reuben A. Clampitt, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout, defendants, Docket No. C–692, Tucson, in accordance with the præcipe filed and made a part of this transcript.

I also attach the original citation and writ of error filed in this case.

I further certify that the cost of preparing and certifying to said record amounts to the sum of thirty-three one thirty-five hundredths dollars ($33.35).

61 In testimony whereof I have hereunto set my hand and affixed the seal of the United States District Court for the District of Arizona, at Tucson, in said district, this third day of February, in the year of our Lord one thousand nine hundred nine-

teen, and of the Independence of the United States of American the one hundred forty-third.

[SEAL.] MOSE DRACHMAN,
Clerk United States District Court, District of Arizona.
By EFFIE D. BOYCE,
Chief Deputy Clerk.

62 In the Supreme Court of the United States.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR, *vs.* HARRY C. WHEELER, GEORGE B. WILCOX, WALTER Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout, defendants in error.	Writ of error.

The President of the United States to the honorable, the judges of the District Court of the United States for the District of Arizona, greeting:

Because, in the record and proceedings, as also in the rendition of a decision, order, and judgment of a plea which is in the said District Court before you, or some of you, between the United States of America and Harry C. Wheeler, George B. Wilcox, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout, in and by which decision, order, and judgment a certain indictment, and each and all of the counts thereof a part, was quashed and the demurrer to the said indictment, and each of the counts thereof, was sustained, a manifest error hath
63 happened, to the great prejudice and damage of the said United States of America, as by its complaint more fully appears:

We being willing that that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, to be holden at the city of Washington, in the District of Columbia, together with this writ, so that you have the same at the said city of Washington, in the

said District of Columbia, within sixty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 24th day of December, in the year of our Lord one thousand nine hundred and eighteen.

[SEAL.]

MOSE DRACHMAN,
Clerk of the United States District Court for the District of Arizona.

Allowed by
WM. H. SAWTELLE,
United States District Judge for the District of Arizona.

64 In the Supreme Court of the United States. United States of America, plaintiff in error, vs. Harry C. Wheeler, George B. Wilcox, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout, defendants in error. Writ of error. Filed Dec. 24th, 1918. Mose Drachman, clerk.

65 In the Supreme Court of the United States.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
vs.
HARRY C. WHEELER, GEORGE B. WILCOX, WALTER DOUGLAS, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout, defendants in error. } Citation.

The President of the United States of America to Harry C. Wheeler, George B. Wilcox, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout, greeting:

You, and each of you, are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at

the city of Washington, in the District of Columbia, on the 22d day of February, in the year of our Lord, one thousand nine hundred and nineteen, pursuant to a writ of error, duly issued and now on file at the office of the clerk of the District Court of the United States for the District of Arizona, wherein the United States of America is plaintiff in error and you are defendants in error, then and there to show cause, if any there be, why the decision, order, and judgment rendered against the said plaintiff in error, as in said
66 writ of error mentioned, should not be annulled, reversed, and held for naught, and why speedy justice should not be done to the parties in that behalf

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 24th day of December, in the year of our Lord one thousand nine hundred and eighteen.

WM. H. SAWTELLE,
United States District Judge
for the District of Arizona.

67 We hereby, this 26th day of December, A. D. 1918, accept due personal service of the foregoing citation on behalf of Harry C. Wheeler, George B. Wilcox, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Mrophy, Philip Tovrea, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout, defendants in error.

E. E. ELLINWOOD,
JOHN MASON ROSS,
CLIFTON MATHEWS,
Attorneys for Defendants in Error.

68 In the Supreme Court of the United States. United States of America, plaintiff in error, vs. Harry C. Wheeler, George B. Wilcox, Walter Douglas, Robert Rae, Miles Merrill, Gerald Sherman, Michael J. Cunningham, James Allison, Bassett T. Watkins, Lemuel C. Shattuck, Michael J. Brophy, Philip Tovrea, Charles H. Hunt, James L. Gannon, Vance M. Johnson, Nelson C. Bledsoe, Joseph P. Hodgson, Alvan W. Howe, William P. Sims, Hascal Snodgrass, G. H. Dowell, and H. H. Stout, defendants in error. Citation. Filed Dec. 27, 1918. Mose Drachman, clerk. By Effie D. Botts, deputy clerk.

(Endorsement on cover:) File No. 26,933. Arizona D. C. U. S. Term No. 847. The United States of America, plaintiff in error, vs. Harry C. Wheeler, George B. Wilcox, Walter Douglas, et al. Filed February 11th, 1919. File No. 26,933.

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